

## **ARTICLE 10 SPECIAL PERMIT GRANTING AUTHORITY**

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### **SECTION 10.0 APPOINTMENT**

10.01 The Zoning Board of Appeals shall consist of three members and four associate members, all residents of the Town of Amherst, the three members appointed and serving for three year terms and as otherwise set forth in Chapter 40A of the General Laws, as amended. The term of each member and associate member shall conclude at the later of the expiration of such term or the qualification of a successor. Said Board shall have all of the powers and duties of Boards of Appeals under said Chapter, and, in addition, all the powers and duties herein prescribed. Copies of rules promulgated by the Board of Appeals may be obtained from the Town Clerk's Office.

10.02 The Planning Board shall consist of nine regular members. In addition, two associate members may be appointed. All members shall be appointed by the Town Manager, with approval of the Select Board, under Section 4.54 of the Amherst Town Government Act and shall be appointed for a term of three years, except for appointments to fill an unexpired term.

Associate members may sit on the Board only for the purposes of hearing and voting upon decisions on Special Permit applications and only in the case of absence, inability to act, or conflict of interest on the part of a regular Board member, or in the event of a vacancy on the Board.

The Planning Board Chair shall designate the associate member to sit on the Board when necessary and in accordance with above circumstances.

### **SECTION 10.1 APPEALS**

Appeals to the Board of Appeals may be taken by any persons aggrieved by reason of their inability to obtain a permit or enforcement action from any administration office under the provisions of said Chapter 40A, or by the regional planning agency, or by any person, including an officer or board of the Town or of an abutting Town aggrieved by an order or decision of the Building Commissioner, Local Inspector, or other administrative official, in violation of any provision of said Chapter or the Zoning Bylaw of the Town of Amherst.

Any such appeal shall be taken by the Board within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk in accordance with the provisions of Chapter 40A.

### **SECTION 10.2 VARIANCES**

Petitions of variances from the terms of the applicable zoning provisions shall be dealt with by the Board of Appeals in accordance with Chapter 40A of the General Laws, as amended. The Board shall grant no variances which would amount to an amendment of this Bylaw.

### **SECTION 10.3 SPECIAL PERMITS**

#### **10.30 Purpose**

Special Permits are intended to provide detailed review of certain Uses and Structures which may have substantial impact upon traffic, utility systems, and the character of the Town, among other things. The Special Permit review process is intended to insure a harmonious relationship between proposed development and its surroundings, and insure that proposals are consistent with the purpose and intent of this Bylaw.

10.31 Authorization

10.310 This Bylaw authorizes the Board of Appeals and the Planning Board to be the Special Permit Granting Authority. A special permit may be required in situations wherein the issues of use or uses and/or location and design are deemed to warrant a process of review conducted by the Board of Appeals or Planning Board, and which includes a public hearing.

10.311 All uses for which a Special Permit is granted shall satisfy:

1. The Special District Requirement set forth in Section 3.2, if applicable;
2. The relevant Standards set forth in Section 3.3; and
3. All other applicable requirements and Standards of this Bylaw.

10.312 Nothing in this Bylaw shall require a change in the plan, construction or designated use of any structure on land for which a Special Permit is in effect at the time of adoption of this Bylaw, or on which a Building Permit has been issued; subject however, to any expiration term of such Special Permit or to Chapter 40A, Section 6, of the General Laws and to the requirement that construction or operations under a building or special permit shall conform to any subsequent amendment of the Bylaw unless the use or construction is commenced within a period of not more than six months after issuance of the permit, and on cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. The Special Permit Granting Authority may require any such Special Permit to conform with some or all requirements of the Bylaw if it is amended, modified or transferred.

10.313 In all instances where a Special Permit is required by this Bylaw, no structure shall be erected or externally enlarged, altered, or used for activities or uses, nor shall land subject to such a permit be so used, nor shall any area for parking, loading, or vehicular service, including driveways giving access thereto, be established, used or changed, except in conformity with said Permit. All Special Permits granted by the Special Permit Granting Authority shall include an approved site plan bearing the endorsement of said Authority.

10.32 Application and Approval Procedures

10.320 The size, form, contents, and style of plans and specifications required as part of an application for a Special Permit are contained in the Rules and Regulations of the Special Permit Granting Authority, a copy of which is on file in the Town Clerk's Office.

10.321 The procedure for the submission and approval of Special Permits is prescribed in the Rules and Regulations of the Special Permit Granting Authority, a copy of which is on file in the Town Clerk's Office.

10.322 All plans and documents required by this Bylaw shall be considered integral parts of an application. Applications shall be subject to such Rules and Regulations relating to scale, dimensions, legend, form, fees, preparation and other information as may from time to time be promulgated by the Special Permit Granting Authority. The Special Permit Granting Authority may require additional information in order to review an application adequately and make a decision. Site Plans for Planned Unit Residential Developments shall be prepared in accordance with the specifications for Preliminary Subdivision plans set forth in the Rules and Regulations Governing the Subdivision of Land, as may be amended from time to time.

10.323 Upon receipt of an application for a Special Permit, the Special Permit Granting Authority shall transmit copies of the application and plans to appropriate Town boards and officials which may include: the Building Commissioner, Planning Director, Town Engineer, Fire Chief, Conservation Director, Board of Health, Historical Commission, Public Transportation Committee, Leisure Services Commission, and others as necessary. These boards and officials shall have thirty-five (35) days to report to the Special Permit Granting Authority their findings and recommendations. Failure to report in the allotted time shall constitute approval by that board or official of the application submitted.

10.33 Modification, Amendment or Renewal

The Special Permit Granting Authority shall have the authority to modify, amend, or renew its approval of a Special Permit upon written application of the owner, lessee, or mortgagee of the premise; provided however, that such action is consistent with the purposes and intent of this Bylaw, and a public hearing has been held.

10.34 Transfer

Where a Special Permit involving the construction of buildings has not been implemented by substantial construction, said Permit shall not pass to future owners of the property without a public hearing and approval by the Special Permit Granting Authority.

10.35 Document Distribution

Where the Special Permit Granting Authority grants a Special Permit, one (1) copy each of the decision, conditions, and approved plans shall be filed with the Planning Board, Building Commissioner, and the Town Clerk; one (1) copy shall be returned to the applicant, and one (1) copy of said document shall be kept on file in the Department of Inspection Services or Planning Department. The set of documents on file with the Town Clerk shall bear the endorsement of the Special Permit Granting Authority and certification by the Special Permit Granting Authority that copies of the decision and related plans have been filed in accordance with this section.

10.36 Time Schedule

A Special Permit shall only be issued following a public hearing held within 65 days after the Special Permit Granting Authority receives an application from the Town Clerk. The Special Permit Granting Authority shall act within 90 days following a public hearing. Failure to take final action upon an application for a Special Permit within said 90 days following the date of a public hearing shall be deemed to be a grant of the permit applied for.

10.37 Expiration

A Special Permit granted under this article shall lapse within two years of the date that it is filed with the Town Clerk by the Special Permit Granting Authority unless it has been both recorded at the Registry of Deeds and substantial construction or use thereunder has commenced within this period

10.38 Specific Findings Required

The Special Permit Granting Authority may grant a Special Permit authorized by this Bylaw if said Authority finds, when applicable, that:

10.380 The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority.

10.381 The proposal is compatible with existing Uses and other Uses permitted by right in the same District.

10.382 The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features.

10.383 The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians.

10.384 Adequate and appropriate facilities would be provided for the proper operation of the proposed use.

10.385 The proposal reasonably protects the adjoining premises against detrimental or offensive uses

- on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.
- 10.386 The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.
- 10.387 The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. If the Special Permit Granting Authority deems the proposal likely to have a significantly adverse impact on traffic patterns, it shall be permitted to require a traffic impact report, and the proposal shall comply with Section 11.2437 of this Bylaw.
- 10.388 The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.
- 10.389 The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.
- 10.390 The proposal ensures protection from flood hazards as stated in Section 3.228, considering such factors as: elevation of buildings; drainage; adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant materials; extent of paving; effect of fill, roadways or other encroachments on flood runoff and flow; storage of chemicals and other hazardous substances.
- 10.391 The proposal protects, to the extent feasible, unique or important natural, historic or scenic features.
- 10.392 The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundaries. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings, selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen. See Section 11.3.
- 10.393 The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.
- 10.394 The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes, and wetlands.
- 10.395 The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. Within the B-L, B-VC, B-N, COM, OP, LI and PRP Districts, and any residential zoning district where the project in question occurs within the boundaries of a National Historic Register District, the Special Permit Granting Authority shall, if it deems the proposal likely to have a significant impact on its surroundings, be permitted to use the design principles and

standards set forth in Sections 3.2040 and 3.2041, 1) through 9) to evaluate the design of the proposed architecture and landscape alterations. Within the B-G and abutting B-L districts, and

for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.

10.396 The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

10.397 The proposal provides adequate recreational facilities, open space and amenities for the proposed use.

10.398 The proposal is in harmony with the general purpose and intent of this Bylaw.

#### **SECTION 10.4 CONDITIONS, SAFEGUARDS, AND LIMITATIONS**

10.40 In granting a Variance, the Board of Appeals; or in granting a Special Permit, the Special Permit Granting Authority, in accordance with Sections 9 and 10 of Chapter 40A, may impose conditions, safeguards, and limitations which shall be in writing and shall be a part of any Variance or Special Permit granted. Such conditions, safeguards, and limitations may include, among other matters and subjects:

10.400 Setback, Side and Rear Yards greater than the minimum required by this Bylaw;

10.401 Screening of parking areas or other parts of the premises from adjoining premises or from the streets by specified walls, fences, plantings, or other such devices;

10.402 Limitation of size, number of occupants, method or time of operation or extent of facilities;

10.403 Modification of the exterior design or appearance of buildings, structures, signs, or landscape materials.

10.41 In granting a Variance, the Board of Appeals; or, in granting a Special Permit, the Special Permit Granting Authority, may require a bond or other security to insure compliance with the conditions and approved Site Plan.

#### **SECTION 10.5 NOTICE OF HEARING**

The Special Permit Granting Authority, for a Special Permit application, or the Board of Appeals, for a Variance or Appeal, shall fix a reasonable time for a public hearing. The notice, posting, and publication therefore shall be in accordance with the provisions of Section 11, Chapter 40A of the General Laws.

In addition to the notice requirements of M.G.L. Chapter 40A, the following requirements shall also apply:

In any instance where a Special Permit or Site Plan Review application is filed with the Town and there are tenants or lessees on the property which is the subject of the permit request, the applicant shall provide notice of the permit request to those tenants or lessees of the units by distributing a notice of the request, with the date, time and location of the public hearing, to those tenants or lessees, or by posting notice in one or more common areas such as will likely result in actual notice to tenants or lessees. The applicant shall submit a sworn and notarized letter to the Permit Granting Authority stating that this requirement has been met and by what means.

If said notification requirements have been met to the satisfaction of the Permit Granting Authority, a circumstance where individual tenants or lessees fail to receive notification shall not serve to invalidate the public hearing.